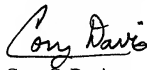


<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b> (filed with the Notice of Appeal)		Docket Number 042933/308282
Application Number 10/099,977	Filed March 19, 2002	
First Named Inventor Francis Emmerson		
Art Unit 2174	Examiner Steven Paul Sax	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>Respectfully submitted,</p> <p> Cory C. Davis Registration No. 59,932</p> <p>Date <u>March 1, 2010</u></p> <p><b>Customer No. 00826</b> <b>ALSTON &amp; BIRD LLP</b> Bank of America Plaza 101 South Tryon Street, Suite 4000 Charlotte, NC 28280-4000 Tel Atlanta Office (404) 881-7000 Fax Atlanta Office (404) 881-7777</p> <p><b>ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT &amp; TRADEMARK OFFICE ON March 1, 2010.</b></p>		

## Attachment

### Reasons for Requesting Pre-Appeal Brief Request for Review

#### **I. Claims 13-18, 21, 22, 24-39 & 47-58 are not obvious over Lebel & Kosmynin**

Claims 13-18, 21, 22, 24-39 and 47-58 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Lebel et al. (U.S. Patent Appln. Publn. No. 2003/0009203; hereinafter “Lebel”) and Kosmynin (U.S. Patent Appln. Publn. No. 2001/0054084; hereinafter “Kosmynin”).

In contrast to claim 13 Lebel, taken individually or in combination with Kosmynin, does not teach or suggest and is altogether silent regarding an apparatus comprising a processor configured to, *inter alia*: (A) generate *content* comprising *validation data and other data* which *comprises software*, the content being stored at the apparatus; and (B) *download the content to a terminal*, upon receipt of a signal transmitted by the terminal to connect to the apparatus. The *validation data* of the content downloaded from the apparatus being configured to permit the terminal to *determine whether the content was securely downloaded* and that the content *originated from the apparatus*. The processor is configured to *download the content by downloading the validation data and the other data concurrently from the apparatus together in a single download file*.

#### **1. Download Content Comprising Validation Data & Other Data Concurrently In Single File**

On pages 2-3 of the Office Action, the Examiner relies on paragraphs [0017], [0021], [0125]-[0126], [0141]-[0143], [0145], [0156] and [0159] of Lebel, alone or in combination with Kosmynin, as allegedly disclosing the above features of claim 13. Applicant respectfully disagrees and submits that the Examiner is giving the combination of Lebel and Kosmynin credit for more than it actually teaches.

In contrast to claim 13, the cited portion and indeed all of Lebel, alone or in combination with Kosmynin, at most discloses that downloading may occur from an external communication device to an implantable device. (paragraphs [0141]-[0142] of Lebel) In this regard, Lebel, alone or in combination, explains that downloading may be initiated by using an inbound load start message that includes an overall validation code (e.g., CRC) for a program that is to be

downloaded. (paragraph [0143] of Lebel) Lebel, alone or in combination with Kosmynin, also explains that the software of the program may be downloaded from a non-volatile memory module in the external communication device. (paragraphs [0143]-[0145] of Lebel) Additionally, Lebel, alone or in combination with Kosmynin, describes that “[d]ownloads then occur using one or more inbound load continue messages each having data portions (**excluding op-code and validation code**).” (paragraph [0143] of Lebel) (emphasis added)

In view of the foregoing, Lebel, alone or in combination with Kosmynin, at most discloses that an inbound load start message containing a validation code (e.g., CRC) may be sent from the external communication device to an implantable device. In this regard, Lebel, alone or in combination with Kosmynin, describes that after receiving the validation code, downloads of data portions from the external communication device may occur using one or more inbound load continue messages that “exclude[s] ... [the] validation code.” (paragraph [0143] of Lebel)

Claim 13 recites, *inter alia*, an apparatus comprising a processor that generates *content* comprising *validation data and other data which comprises software*, the content being stored at the apparatus and *downloading the content to a terminal*. The processor is configured to *download the content by downloading the validation data and the other data concurrently from the apparatus together in a single download file*. The combination of Lebel and Kosmynin does not teach or suggest at least this feature of claim 13 since as described above the “validation code (e.g., CRC)” of Lebel, alone or in combination with Kosmynin, is sent to the implantable device in an inbound load start message and then the software is downloaded using a series of “inbound load continue messages ... [that] **exclud[es] ... [the] validation code**.” (paragraph [0143] of Lebel) (emphasis added) Since the validation code is excluded from the inbound load continue messages, Lebel, alone or in combination with Kosmynin, does not teach or suggest that the validation code and the software are downloaded concurrently together in a single download file, as would be required by claim 13.

In contrast to claim 13, the combination of Lebel and Kosmynin, at most, discloses that the validation code and the software are downloaded to the implantable device in separate messages such as an inbound load start message and inbound load continue messages. As such, Lebel, alone or in combination with and Kosmynin, does not teach or suggest *downloading content by downloading validation data and the other data comprising software concurrently*

from the apparatus *together in a single download file*, as recited by claim 13. For at least this reason, the combination of Lebel and Kosmynin is deficient.

On page 2 of the Advisory Action, the Examiner alleges that the combination of Lebel and Kosmynin discloses content comprising validation data and other data which comprises software allegedly because “[t]here are many kinds of data in Lebel (as well as in Kosmynin) which satisfy “other data or software.” Even assuming *arguendo* that the combination of Lebel and Kosmynin discloses many kinds of data such as “other data or software” as asserted by the Examiner, the combination still does not teach or suggest all of the features of claim 1. Claim 13 recites that the processor is configured to download the *validation data and the other data* comprising software *concurrently* from the apparatus *together in a single download file*. Claim 13 also recites that the *validation data* of the content downloaded from the apparatus is configured to *permit the terminal to determine* whether the content was *securely downloaded* and that *the content originated from the apparatus*.

Downloading “other data or software ... in a single file” as at most disclosed by the combination of Lebel and Kosmynin, and as alleged by the Examiner on page 2 of the Advisory Action, does not teach or suggest downloading validation data and other data comprising software concurrently from an apparatus together in a single download file, as would be required by the recitations of claim 13. Instead, as described above, Lebel, alone or in combination with Kosmynin, at most discloses that the “validation code (e.g., CRC)” is sent to the implantable device in an inbound load start message and then the software is downloaded using a series of inbound load continue messages that excludes the validation code. (paragraph [0143] of Lebel) Since Lebel, alone or in combination with Kosmynin, at most discloses that the inbound load start messages excludes the validation code, the combination does not teach or suggest a processor configured to download the content by downloading the validation data and the other data comprising software *concurrently* from the apparatus *together in a single download file*, as required by the recitations of claim 13.

## **2. Evaluate Mime Data & Header to Determine Correct Content & Authorized Apparatus**

Claim 13 also recites, *inter alia*, that (A) the validation data comprises a download transport protocol header and mime data which identifies the content and a type of the software,

wherein the (B) terminal is configured to evaluate the mime data to determine whether the content is correct and evaluate the header to determine whether the apparatus is an authorized apparatus which is an approved source for downloading the content.

On page 3 of the Office Action, the Examiner relies on paragraphs [0345], [0408] and [0476] of Kosmynin, alone or in combination with Lebel, as disclosing these features of claim 13. In contrast to claim 13, the cited portion and indeed all of Kosmynin, alone or in combination with Lebel, at most discloses “MIME encoded objects” that may be included in headers during a downloading stage so that when a client interprets the MIME encoded object, the client may extract metadata from the message.

However, detecting MIME encoded objects in a header in order to extract metadata from a message, as at most disclosed by the combination of Kosmynin and Lebel, does not teach or suggest any validation data that comprises a download transport protocol header and mime data identifying content and a type of software of the content, as recited by claim 13. Additionally, a client detecting MIME encoded objects in a header in order to extract metadata from a message does not teach or suggest evaluating the MIME encoded objects to determine whether downloaded content is correct and evaluating a download transport protocol header to determine whether an apparatus is an authorized apparatus that is an approved source for downloading content, as also recited by claim 13. For at least this additional reason the combination is deficient.

On page 2 of the Advisory Action, the Examiner alleges that Kosmynin, alone or in combination with Lebel, discloses mime data and that such disclosure teaches features of claim 13. Applicant respectfully disagrees. Even assuming *arguendo* that Kosmynin, alone or in combination with Lebel, discloses mime data as asserted by the Examiner, the combination still does not teach or suggest all of the features of claim 13.

As described above, nowhere in any portion of Kosmynin, alone or in combination with Lebel, is there any mention, teaching or suggestion relating to: (A) any validation data comprising a download transport protocol header and *mime data which identifies the content and a type of the software* of the content; and (B) a terminal that is configured to *evaluate the mime data of the validation data to determine whether the content is correct* and evaluate the header to determine whether the apparatus is an authorized apparatus which is an approved source for downloading the content, as required by the recitations of claim 13. Kosmynin, alone or in

combination with Lebel, is altogether silent and does not contemplate any validation data that comprises mime data which identifies content and a type of software of the content. Kosmynin, alone or in combination with Lebel, is also altogether silent and does not contemplate any mime data which is used by a terminal to determine whether content that is downloaded to the terminal is correct, as would be required by the recitations of claim 13.

Based on at least the foregoing reasons, Applicant submits that the combination of Lebel and Kosmynin is deficient and does not teach or suggest all of the features of claim 13. Applicant therefore respectfully requests reversal of the § 103(a) rejection of claim 13 and its dependent claims 15, 16, 25, 30, 35, 47, 48 and 50.

Since independent claims 14, 17, 18 and 20 contain features analogous to, though not necessarily coextensive with the features recited in claim 13, Applicant submits that independent claims 14 and 17 and their respective dependent claims 21, 22, 26, 31, 36, 51, 53 and 27, 32, 37 and 54 as well as independent claims 18 and 20 and their respective dependent claims 28, 33, 38, 56 and 24, 29, 34, 39 and 58 are patentable at least for reasons analogous to those submitted for independent claim 13.

## **II. Claims 45, 46 & 59 are not obvious over Lebel, Kosmynin & Nonaka**

Claims 45, 46 and 59 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lebel, Kosmynin and Nonaka et al. (U.S. Patent No. 7,073,073; hereinafter "Nonaka"). Applicant respectfully traverses this rejection for at least the following reasons.

As discussed above, Lebel and Kosmynin, taken individually or in combination, are deficient vis-à-vis independent claims 13 and 20 and Nonaka does not make up for the deficiencies of Lebel, alone or in combination with Kosmynin, and is not cited for such. As such, claims 45, 46 and 59 are patentable at least by virtue of their respective dependencies from claims 13 and 20. Applicant therefore respectfully requests reversal of the § 103(a) rejection of dependent claims 45, 46 and 59.

Accordingly, for all the reasons discussed above, Applicant respectfully requests that the rejection of claims 13-18, 20-22, 24-39 and 45-59 be reversed.